

ATTACHMENT 5

DATE: September 29, 2002

TO: Elizabeth A. Cook, Chief of Planning
Fauquier County Department of Community Development

FROM: L. Frederick and Alison J. Worrall *ajw*
Parcel 19A PIN # 7907-51-4972-000
District: Scott
Zoning: RC

SUBJECT: Family Transfer Division Under Consideration
TM 64 (6) PARCEL 18 PIN # 7907-32-7163-000
DISTRICT SCOTT
ZONING RC



We received notice that the Department of Community Development had received a request for a Family Division. The property is owned by Ray A. (Jr.) and JoAnn Peterson. The proposal is to create two (2) lots of approximately 4.5 and 5.5 acres. Access to both lots will be from General Hunton Road.

We oppose the proposed division of property for the following reasons:

- (1) The division of property, as proposed, violates number 14 of the covenants of Pond Mountain Estates Homeowners Association, which states "Estates within the subdivision may be resubdivided provided that all county regulations (*ordinances*) are met."
- (2) The division as proposed violates Fauquier County Zoning Ordinance, amended through July 26, 2002; Article 7, Off-Street Parking and Loading, Streets, Water and Sewer, Tree Canopy, Landscape and Buffer Requirements; Part 3, Private Streets, Section 7-302 (1)(B), which states "The private road must connect directly to a state maintained street."

General Hunton Road is a private road that connects directly to another private road, Pond Mountain Road. Because the proposed division of property violates #14 of the Pond Mountain Estates Homeowners Association covenants and Section 7-302 (1)(B) of Article 7 of the Fauquier County Zoning Ordinance, amended through July 26, 2002, we oppose this division of property.

October 4, 2002

Department of Community Development
Chuck Floyd, Elizabeth A. Cook

Subject: Family Transfer Division under Consideration
TM 64 (6), Parcel 18, Scott District, RC Zoning,
Pin # 7907-32-7163-000

To Whom It May Concern:

I am commenting on this matter as a homeowner in the Pond Mountain Subdivision. I am concerned that not all of the homeowners have been notified of this request, and that unless proper notification is made to ALL of the homeowners, many will remain unaware of the potential consequences of this request.

As I understand the request, under the family transfer law, the property owners wish to horizontally divide their property and create a new road to the new parcel. This would constitute a new private road, off an existing private road, off the main private road, all of which are (or would be) maintained by the entire subdivision per our covenants.

When this matter was put before a Pond Mountain Homeowners' Association board meeting in April, it was done so casually, without prior notice. I also suspect there was not the required quorum of attendees needed for there to have been an action taken.

I respectfully ask that this request be denied. If not denied, then I am asking for a proper hearing with notification to everyone affected, which would be all homeowners in Pond Mountain.

Sincerely,



Pond Mountain Homeowners Association
6105 General Hunton Road
Broad Run, Virginia 20137
540-341-7507


October 7, 2002

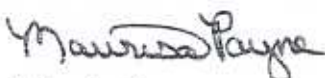



Ms. Elizabeth A. Cook
Chief of Planning
Fauquier County Department of Community Development
Warrenton, Virginia

Dear Ms. Cook:

We are aware that the deadline was Friday, October 4, 2002, for commenting on the proposed Family Transfer Division, TM 64 (6), Parcel 18, PIN number 7907-32-7163-000, Scott District, RC Zoning. However, some homeowners in the Pond Mountain Homeowners Association have expressed concerns about this proposed family land transfer and the manner in which it was brought to a vote before the membership present at a May 15, 2002, meeting without being properly placed in advance on the agenda for said meeting. Therefore, we request that the attached document be recorded as part of the record associated with this proposed family land transfer.


Barbara E. Rice
Member of the Board


Maurisa Payne
Member of the Board


Alison J. Worrall, President
Member of the Board

HAND DELIVERED

DATE: October 7, 2002

TO: Elizabeth A. Cook, Chief of Planning
Fauquier County Department of Community Development

FROM: Maurisa Payne, Member of the Board, *unp 10/7/2002*
Pond Mountain Homeowners Association
Barbara E. Rice, Member of the Board, *BLR 70.102*
Pond Mountain Homeowners Association
Alison J. Worrall, Member of the Board and President, *ajw 10/7/02*
Pond Mountain Homeowners Association

SUBJECT: Family Transfer Division Under Consideration
TM 64 (6) PARCEL 18 PIN # 7907-32-7163-000
DISTRICT SCOTT
ZONING RC

On October 3, 2002, at approximately 2:00 p.m., Maurisa Payne spoke with Mr. Chuck Floyd employed by the Fauquier County Department of Community Development regarding the proposed family land transfer as noted above. This document supports, in part, the discussion Ms. Payne had with Mr. Floyd. Mr. Floyd informed Ms. Payne that he would note the file of said discussion and would accept written documentation during the week following the October 4th deadline.

The family land transfer in question was brought before the Pond Mountain Homeowners Association membership meeting held May 15, 2002, at 7:30 p.m. The land transfer was introduced by Mr. Ray Peterson as part of new business from the floor and was not part of the published agenda. **Prior notice** of this issue was not given to any Pond Mountain Homeowners Association member. A bare quorum was present and a vote was immediately taken to allow the land transfer without discussion of the facts related to the land transfer. Alison J. Worrall, President of the Pond Mountain Homeowners Association, issued a letter dated May 23, 2002, to Mr. Ray Peterson, Jr., owners of the land proposed for transfer, welcoming the new family to the neighborhood. Ms. Worrall issued said letter in good faith prior to knowledge that the proposed land transfer was in violation of the Pond Mountain Homeowners Association covenants and Fauquier County Zoning ordinances.

Additionally, subsequent to the issuance of the May 23 letter, some homeowners have expressed concerns, which include the following:

meeting and did not have the opportunity to address the land transfer either in writing or orally. Because the homeowners who were present at the meeting did not have all the facts, and because some homeowners have raised concerns regarding the proposed land transfer and how it might financially impact them, the Board believes the entire membership of homeowners should have an opportunity to meet once again for the purpose of expressing their concerns and views on this issue.

2. The proposed land transfer financially impacts every homeowner in the subdivision. The Pond Mountain Homeowners Association repairs and maintains the two private roads within the subdivision. Road assessment fees are determined annually, by the condition of the roads. Road assessment fees can range from \$5,000 per year per household to \$150 per year per household. Road repairs and the necessary costs associated with such, are a constant source of agitation and dispute among the homeowners. The heavy construction equipment will, undoubtedly, cause damage to the roads. These two private roads were paved **after** the majority of homes in this subdivision were constructed. They are not up to state standards and are not meant to carry the weight of heavy construction equipment. Every homeowner will be assessed a substantial fee to repair the roads, and therefore should have had proper prior notice of said request with appropriate discussion time for each member to carefully consider the proposed subdivision of property.
3. General Hunton Road, the private road from which the transferred land would gain access, has the legally designated right-of-way of 30 feet and a semi-paved surface that is only 9 feet 3 inches wide at the point where the ingress to the newly proposed lot begins. Currently, five (5) homes with six (6) families travel this narrow road on a daily basis. Each family has a minimum of two (2) vehicles. Twelve (12) vehicles use General Hunton Road on a daily basis, not including guests, delivery trucks, etc. Each vehicle traveling the road adds additional stress. A road width of a little over 9 feet does not allow vehicles to pass each other in the opposite direction. At many points along the road there is no room to move to the shoulder. To bring General Hunton Road up to standards so vehicles may travel in opposite directions would generate significant financial hardship for all current Pond Mountain Association homeowners.
4. The proposed land transfer violates Fauquier County Zoning Ordinance, amended through July 26, 2002; Article 7, Off-Street Parking and Loading, Streets, Water and Sewer, Tree Canopy, Landscape and Buffer Requirements; Part 3, Private Streets, Section 7-302 (1)(B), which states "The private road must connect directly to a state maintained street." General Hunton Road is a private road that connects directly to another private road, Pond Mountain Road.

Maurisa Payne
5231 Pond Mountain Road
Broad Run, VA 20137

HAND DELIVERED

October 3, 2002

Department of Community Development
1st Floor - Court Building
Mulpepper Street
Falls Church, VA 20186

RE: PETERSON Family Transfer Division Under Consideration
TM 64 (6) Parcel 18 PIN #7907-32-7163-000
District Scott Zoning RC

Sir or Madam:

In receipt of your Adjoining Property Owner Notification Letter, dated September 19th regarding the proposed Family Transfer Division of the Ray A. (Jr.) & JoAnn Peterson property above. I am the recorded owner of Lot 12, which shares the complete back boundary line with the Peterson property. I am also Board Member for the Pond Mountain Homeowners Association.

For better understanding, this property is located on General Hunton Road (a private road), off Pond Mountain Road (another private road).

I am hereby requesting in writing that this Family Transfer Division be **denied** based on the following reasons:

Pond Mountain Homeowners, who will have a major financial burden for road repairs should this pass, were not made aware **prior to** the May 15th Homeowners Association meeting that this proposed family transfer was going to be requested. Instead, Mr. Ray Peterson asked for permission for the transfer from the floor and an immediate vote was taken with no time allotted for discussion. There was a questionable quorum present. Homeowners not present at said meeting were not made aware of said request in advance and therefore their interests have not been protected.

IT IS NOT IN COMPLIANCE with current zoning regulations to allow this transfer.

"Estates within the subdivision may be resubdivided providing that all county regulations are met." (recorded in Deed Book 320, Page 636, copy attached)

The Pond Mountain HOA was not aware during our May HOA meeting wherein the questionable majority voted to give the Peterson's permission for the family transfer, that a current Fauquier County Zoning Ordinance (Article 7, Section 302-B) **prohibits the subdivision of property on a private (General Hunton Road) off of a private road (Pond Mountain Road)**. We were, therefore, unaware that we as a Homeowners Association had any **legal** right to deny the subdivision request of our neighbor. Such Homeowners Association permission is necessary for a family transfer division (per the Fauquier County Subdivision Ordinance Section 2-39 (11)). Therefore, the letter written by the Pond Mountain Homeowners Association dated May 23, 2002 is **invalid**.

This Zoning Ordinance was brought to my attention in a conversation with Jennifer Kalansky of the Fauquier County Planning Department in August, 2002. Our Homeowners have not been formally notified of the legal ordinance which prohibits this subdivision, because the Peterson's have been vague as to when they were going to begin this transfer process. We held a scheduled HOA Meeting on September 18th, which was one day before your above referenced letter was written and mailed - which was the first time we knew they had officially applied. We had this item on our agenda, but simply never got to it. Therefore our Homeowners Association members are currently unaware that we had/have a legal right to deny their request, based on our recorded Covenants which would only allow the division if it were compliant with current Fauquier County Zoning Ordinance, which we now know it is not.

We, as a homeowners association, have not had the opportunity to make it known to the members of our association that the above stated County Ordinance (Art. 7, Section 302B) does **not** permit the subdivision of lots because they front on a private road-off of a private road, and therefore our recorded Declaration of Covenants, Conditions and Restrictions prohibits the division. Therefore, this family division request should be **denied**.

3. **Proposed Subdivision NOT in accordance with original request voted upon by Pond Mountain Membership.** Representation was made at the May meeting by Mr. Ray Peterson that the proposed family division would allow frontage by both newly created lots on General Hunton Road. Please note that the letter dated May 23, 2002 from the Pond Mountain Homeowners Association indicates that both lots front on General

4. **Financial Impact:** The two private roads in our subdivision must be maintained by those of us who are homeowners, at our private expense. Our two private roads (Pond Mountain and General Hunton) were paved after the vast majority of homes were constructed, and are in a huge state of disrepair. We have received estimates from various road resurfacing companies to repair our roads, with estimates ranging from **\$131,400 to \$38,922** to simply **repair** our broken private roads. As of March, 2002 our HOA treasury balance was only \$12,922! The cost of these repairs must be borne among 16 homeowners.

Should this proposed family transfer be granted through Special Exception or otherwise, we - the 16 homeowners - will suffer financially due to the heavy damage done to our already inferior roads because of the heavy equipment, truckloads of lumber, concrete trucks, plumbers, carpenters, electricians, earth moving equipment, etc. that will travel these roads. Our thin layers of asphalt will be broken and crumbled. This is not to mention the fact of the future and forever additional traffic of the now subdivided lot. Therefore, this family division request should be **denied**.

5. **Private Streets** - It is my understanding that pursuant to the Zoning Ordinance of Fauquier County, Section 7-302-1-B under the heading "Private Streets - Limitations" - Private streets must connect directly to a state maintained street. This request for family division must be **denied due to lack of compliance with said Section 7-302-1-B** because access will be gained from the state maintained Georgetown Road, to privately maintained Pond Mountain Road, to privately maintained General Hunton Road to private third road.

Per Section 10-205.3, the private road would need to be a Type II private road. This division request should be **denied** because Section 7-302.2 indicates that "no private street shall serve more than seven (7) lots" and the private Pond Mountain and General Hunton roads currently serve more than seven lots.

Per Section 7-304.2, Type II streets shall be..."sixteen (16) feet in width." Note that private Pond Mountain Road averages 15.5 feet in width, and private General Hunton Road averages 9.5 feet in width. The family division request should be **denied** due to this substandard road.

6. **Pipestem Lots/Cul-de-Sac Streets** - The recorded plat indicates that the private General Hunton Road is a cul-de-sac private street. Per Subdivision Ordinance Section 5-8 "Cul-

Because there is **no turnaround**, this private General Hunton road is basically a pipestem emerging from the private Pond Mountain Road. Per Zoning Ordinance Article 2-404.1 pipestem lots are not to "exceed three (3) in number...". Additionally, per Zoning Ordinance Article 2-404.3 "The minimum width of a single pipestemshall be twenty (20) feet or such other greater width.....". This family division request should be **denied** because there are currently **more than 3** houses on this private General Hunton Road, and the road is **less than 20 feet in width**.

7. **Unsafe Bridge** - There is currently a bridge on General Hunton Road that Lot 18 joins (lot requesting family division). I have no direct knowledge, but I have been informed that this bridge was built and installed by two homeowners. Therefore, I request that this family division be **denied** because it does not meet VDOT standards and cannot carry additional traffic.
8. **Lack of Road Frontage** - This family division request should be **denied** because the proposed new lot as shown on the official plat has no road frontage, per Zoning Ordinance Article 2-405.

In various sections of Article 1, Part 2 - Purpose and Intent of the Zoning Ordinance of Fauquier County, it specifies that said Ordinance is "intended to promote the health, safety and general welfare of the public...", and under #11 to "protect against...undue density of population in relation to available community facilities...and danger and congestion in travel and transportation...". Therefore, I request that this family division request be **denied** because it goes strictly against the quoted Zoning Ordinance and its stated purpose. The public would be the Pond Mountain Estates homeowners who would all be adversely impacted by further divisions.

We, as neighbors and homeowners should not be forced to suffer financial loss due to the damage that will be done to our privately financed road system which are already substandard and present a safety risk, simply for the benefit of one family who will quite obviously profit should this transfer be allowed. Our Board of Supervisors should stand behind the Fauquier County Zoning Ordinance and prevent this family transfer, thereby protecting those of us who would suffer the financial loss.

Page Five.

Now knowing that the HOA permission was granted **prior to** our members knowing it was against County Ordinance, I further request that should the Board of Supervisors consider an exception, each Pond Mountain homeowner be notified in advance of such exception consideration so that we can prepare and present our road repair and anticipated financial loss statements to the Board **BEFORE** a final decision is reached.

Thank you.

Sincerely,



MAURISA PAYNE
Pond Mountain Estates
Board of Directors Member
and Lot 12 Owner

Attachments:

1. Pond Mountain Estates
Restrictions and Covenants
Deed Book 320, Pages 635 and 636
2. Pond Mountain HOA Treasury Report
Dated March 24, 2002 - Balance: \$12,922.93
3. Pond Mountain HOA Road Repair Options
Dated June 26, 2001
Option 1 - \$64,480.00
Option 2 - \$131,404.00
Option 3 - 38,922.00

SCHEDULE A

BOOK 320 PAGE 635

RESTRICTIONS AND COVENANTS

SECOND MOUNTAIN ESTATES, FAUQUIER COUNTY, VIRGINIA

- . The land herein conveyed shall be used for residential purposes only.
- . Dwellings of brick or brick front shall have a minimum of 200 square feet of living space. Dwellings with standard approved siding shall have a minimum of 1400 square feet of living space. No buildings of cinder block or marine plywood shall be used for residences.
- . No out buildings, garages, or garage apartments shall be constructed upon any estate prior to construction of the main dwelling.
- . No building or portion of building shall be constructed within 50 feet from the front estate boundary or 25 feet of the side or rear boundaries.
- . No barbed-wire fences shall be erected within 75 feet of front boundary line.
- . Estates shall be maintained in good appearance by removing under brush, falling trees and debris and/or keeping weeds and grass cut to 6 inches in height within 100 feet of road easement. This will not apply to estate owners who have not built until period of 1 year from date of purchase.
- . There shall be no junk cars or other such debris that will be unsightly to the subdivision.
- . No more than 1 head of large livestock such as cows and horses shall be allowed per acre. There shall be no fowl except as a pet, however, pigs, or other objectionable animals will not be permitted.
- . A subdivision association shall be formed which will consist of estate owners, and, upon signing their respective contract to purchase an estate to become a member of the Association, and to contribute their pro-rata share of the funds necessary to keep roads up. Membership fees shall be \$50.00 per year. Each estate owner being entitled to one vote regardless of how title thereto may be held.
0. The Association shall elect an officer or officers and a board of Directors which shall consist of five members once every two years, who shall be responsible for collecting said dues and having roads maintained. Officers and Board members shall receive no pay for their duties, but will be reimbursed for actual expenses incurred performing their duties.

3. In the event an estate owner refuses, neglects or fails to satisfy his membership dues within 30 days as aforesaid, the Association is entitled to interest at a rate of 7% per annum and shall be entitled to cost of collection including reasonable attorney's fees.
4. Estates within the subdivision may be resubdivided providing that all county regulations are met.
5. The well and septic system will be installed in complete compliance with Fauquier County Health Department and in the areas approved by the said Health Department or some certified soil scientist.
6. No trailers shall be kept or maintained on the land which shall be mobile homes or otherwise used for residential or living purposes. This restriction, however, shall not include campers, camper trailers or other recreational travel equipment.
7. Driveway entrances must be constructed in accordance with the Virginia Department of Highways' requirements. During construction of homes, the tracking of mud or debris onto streets must be removed immediately. Failure to comply may result in additional cost to lot owners.

These covenants shall run until January 1, 1985, after which the said covenants shall automatically be extended for a successive period of ten (10) years unless an instrument signed by a majority of the then owners of the lots in Pond Mountain Estates has been recorded agreeing to change of said covenants whole or in part. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate said covenants to either restrain such violation or to recover damages therefor. Invalidity of any of the covenants or judgments or court order shall in no way effect any other provisions, which shall remain in full force and effect.

Prior to the commencement of construction of any building structure, the owner shall submit to an Architectural Control Committee of three (3) members elected by the membership a complete set of plans for approval. Approval or disapproval will be given in writing within thirty (30) days from receipt of said plans. If no written approval or disapproval of said plans is given within said thirty (30) days, approval shall be considered to have been given.

POND MOUNTAIN HOMEOWNERS ASSOCIATION

FINANCIAL REPORT

TREASURER REPORT FOR 2001

AS OF 24 March 2002

1992 BALANCE	\$	363.08
1993 BALANCE	\$	656.24
1994 BALANCE	\$	401.26
1995 BALANCE	\$	6,779.09
1996 BALANCE	\$	3,289.58
1997 BALANCE AS OF DECEMBER 4, 1997	\$	4,593.58
1998 BALANCE AS OF DECEMBER 4, 1998	\$	6,638.78
1999 BALANCE AS OF DECEMBER 30, 1999	\$	3,575.63
2000 BALANCE AS OF DECEMBER 30, 2000	\$	10,719.76
2001 BALANCE AS OF DECEMBER 30, 2001	\$	12,922.93

ANALYSIS OF ACCOUNT

PREVIOUS BALANCE AS OF Decemebr, 2000	\$	10,719.76
DUES COLLECTED FOR 2001 (15 OF 17)	\$	2,269.81

Total with Deposit

12,989.57

SUMMARY

TOTAL	\$	12,989.57
Less Checks that cleared during CY2001	\$	66.64
EQUALS ASSOCIATION and Current Bank BALANCE	\$	12,922.93

EXPENDITURES SINCE 8 April 2000 (DATE OF LAST REPORT)

CHECK	Number	DATE	TO/FOR	Amount
	193	Jun-01	Jo Ann Peterson - plants	39.99
	194	Sep-02	Ray Petterson - Road Patch	26.65

TOTAL EXPENSES to date (24 March 2002) \$ 66.64

Other Comments :

DUES DUE TO BE COLLECTED AS OF 1 MAY 2002 (17 TIMES \$150) \$2,550.00

Outstanding 2001 DUES \$300.00

TOTAL TO BE COLLECTED FOR 2002 \$2,850.00

POND MOUNTAIN HOMEOWNERS ASSOCIATION 26 JUNE 2001

Since spring of this year our road committee has been diligent in trying to find someone to work with. Our previous company ALL SEASON'S is no longer in business. This has led us to seek other avenues. With this we have contacted C.A. HANCOCK who wanted to do the job but felt it was over his head. Then there was SUPERIOR PAVING CORP. who primarily does state roads and would be able to consult next spring. We were then recommended to GOSSOM & COSTELLO PAVING CO. in Haymarket. They have been in business for over 10 years. They are a very large company and they do work with subdivisions. With that a meeting was set up with Mel Hanks and measurements were taken. Our roads are in serious repair. The following options were presented:

Option 1) Total remove and replace with tar and chip @ \$4.95 sq. yard

Pond Mnt Rd	7,018 sq. Yards	x 4.95 =	34,739
General Hutton	2,978 sq. Yards	x 4.95 =	14,741
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Total	9,996 sq. Yards	x 4.95 =	49,480.00
Additional add on for soft spot repairs			
Est. at 10% of road allowance \$ 15,000			15,000.00
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			Total	64,480.00
18 Homeowners \$3,583. per lot owner	or	in 1/3's @ \$1,195		
16 Homeowners \$4,030 per lot owner	or	in 1/3's @ \$1,344		

Option 2) To install Asphalt.

Pond Mnt Rd	1,359 tons	x 60.25 per ton =	81,880
General Hutton	573 tons	x 60.25 per ton =	34,524

			Total	116,404
Additional add on for soft spot repairs				
Est. at 10% of road. Allowance \$15,000				15,000
				<hr/>

Option 3) To patch holes @ \$2.95 sq. ^{ft}~~yard~~. This would include cutting base, removal Of base, replacement of sub surface of approx. 6 inches and install asphalt.

Pond Mnt Rd	9,750 sq. ft
General Hutton	3,444 sq. ft
	<hr/>
Total	13,194 sq.ft
	<hr/>
X	2.95
	<hr/>
Total	\$38,922.00

18 Homeowners @ \$ 2,163 per lot owner

16 Homeowners @ \$ 2,433 per lot owner

Option 4) Convert road back to gravel

At approximately 1,285 tons of gravel not including to have it laid,
Placed and graded an est. of \$ 22,000 was given. It was also noted that
This would not last very long due to rain wash outs along with continued
Soft spots and maintenance of gravel.

In conclusion of these options it has been highly recommended that as an association we completely replace the tar and chip and fix all the soft spots. This will enable our base to be in proper repair to hold the tar and chip and any future asphalt. Along with this it should lower our repairs to 5 to 10 percent a year depending on the amount of heavy trucks that use our roads. In closing Mr. Hanks will be more than happy to attend our meeting.